



CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 01/11/01

Agenda Item 1

TO: Planning Commission

FROM: James V. De Luz, Assistant Planner

SUBJECT: **Appeal of Denial of Administrative Use Permit No. 00-150-20 – Elias Motaz, Pinnacle Stone (Applicant)/Robert J Figone Et Al (Owner/Appellant):**
Appeal of the Planning Director's Action Denying an Administrative Use Permit Application for open storage and display of stone products and product processing, to continue the use of a trailer as a business office and to use a metal shed that does not meet City design guidelines. The project includes a variance to eliminate landscaping along Johnson Road where a minimum of 10 feet is required, a variance to increase the maximum number of signs from one sign to two, and an exception to the Industrial Design Standards. The property is located at 4321 Breakwater Avenue, north side, with frontage also on Johnson Road in the Industrial (I) District.

RECOMMENDATION:

It is recommended that the Planning Commission deny the appeal thereby denying the administrative use permit.

DISCUSSION:

The project site of approximately one acre is irregular in shape and was annexed to the City in 1982. It is a highly visible parcel, being situated on the last piece of developable land on Breakwater Avenue before the Hayward/San Mateo Bridge. The property, surrounded by a dilapidated chain-link fence, contains a trailer (parked parallel to Breakwater and Jackson) and numerous sheds that appear to be in states of disrepair, and a large billboard. The appellant and property owner, Mr. **Figone**, leased the property to a stone processing and display business approximately one year ago. Since early 2000, there has been no use of City water at the site and therefore no sanitary facilities that meet City standards. There is also no authorized connection to electricity, according to **PG&E**, although there are electric lines running to the buildings on the property. Also, there has been no business license for a business at the site since 1995. The Pinnacle Stone business came to staff's attention via a citizen complaint to the Community Preservation Division.

The area to the west of the property is zoned Flood Plain FP District and will not be developed as it is owned by public agencies and is intended for shoreline preservation purposes. The area to the east, across Johnson Road, is marginally developed with an equipment rental use,

communications facility, dog kennel (use permit recently revoked by City Council), and other 'industrial uses developed while under the County's jurisdiction. Johnson Road is a private street plagued by lack of adequate paving and potholes.

Following notification from City staff regarding the use of the property, the appellant applied for an administrative use permit to legitimize the operation. As part of the application, he proposes to

- Extend landscaping along the Breakwater street frontage and within the display areas;
- Install a decorative fence or wall along at least a portion of the Breakwater Avenue street frontage;
- Relocate the dilapidated office trailer from the south side of the parcel to the east side;
- Create a 1,600 square-foot "workshop" using portions of the run-down metal shed along the westerly property line;
- Place crushed gravel in the parking and traffic circulation areas in lieu of paving, and;
- Provide partial site grading and minimal drainage improvements near the facility entrance

Because no landscaping is proposed along Johnson Road, approval of a variance would be required to eliminate this feature. Also, because the proposed workshop does not meet Industrial Design standards, an exception to these standards is also required in order to approve the structure. Also, two signs are indicated where a maximum of one sign is permitted.

In his appeal letter (see attached letter of appeal dated November 14, 2000), the appellant indicates that the parcel has been in use as a construction/storage yard for more than twenty years. It is staff's understanding that the property was initially used as a staging area for the construction of State Route 92 and later for storage of construction equipment. When annexed to the City in 1983, it was considered a "legal nonconforming use." In order to continue a nonconforming use,

- ◆ There must not be an increase in the intensity of the nonconforming use,
- ◆ The nonconforming use cannot be discontinued for a period of six or more months, and
- ◆ The nonconforming use must not adversely affect or be materially detrimental to adjoining properties.

Additional development of any property on which a legal nonconforming use exists requires that all new uses conform to the provisions of the Zoning Ordinance.

With respect to the subject property, there is no record of any recent contractor's activity (after 1995) associated with the property as evidenced by a lack of business licenses, lack of water usage, and examination of aerial photographs. Even if the contractors' storage yard had been continuous, the proposed use is considered an intensification of the previous storage yard and is, therefore, subject to use permit approval. Also, the Planning Director finds that the proposed use would adversely affect adjoining properties in that it abuts a sensitive open space habitat preservation area and that it is highly visible from State Route 92 where aesthetic considerations are significant.

The appeal letter states that Caltrans has recently purchased the adjoining land to the south for a pedestrian overcrossing and will be installing a 14-foot-high sound wall, which will screen the subject property from the freeway. According to Caltrans they will not be installing a 14-foot-high sound wall; rather, they are installing a 3-foot-high monolithically poured concrete K-Rail type barrier and a chain-link fence. The location of subject site adjacent to a pedestrian link to the Bay Trail gives weight to the opinion of the Planning Director that careful consideration should be given to the design of surrounding development.

The appeal letter indicates that the use helps the economy by employing workers and bringing revenue to the City of Hayward. While staff recognizes that local employment is beneficial, wholesale sales of stone materials do not bring revenue to the City by way of sales tax, and the marginal type of physical development proposed would not contribute in any meaningful way to the property tax base.

City policy recommends that new industrial uses should create a sound local economy, attract new investments, create employment opportunities for residents and generate public revenues for the City (Section V of the General Policies Plan and Policy II of the City's Economic Development Element). In staffs opinion, the proposed use fails to conform with these policies; furthermore, more intensive, tax-generating, high employment industrial uses are more suited to this key gateway location and would be more beneficial to Hayward's economy than the stone wholesaling and storage business.

Economic issues aside, a primary consideration for a use that involves outdoor storage is aesthetic considerations, particularly given its surroundings. An entire section of the City's General Policies Plan is devoted to "City Image." Included within that section is the following.

City image is a central issue in Hayward. Community identity is also essential for making the development decisions that face the City. . . . Central to Hayward's identity is the balance, extent and character of its development. Because development on one property greatly affects neighboring properties and because the pattern of development creates the shared environment and economy, regulation of development has always been a primary purpose of planning. Land use regulation is the strongest tool the City has in shaping its image. (General Policies Plan, pp 1 I-I, 11-7)

A policy of the General Policies Plan states, *“The land use policies and design regulations of the City will be used to shape development in ways consistent with the desired city character.”* If the proposed use were contained within an enclosed building, the use would be allowed by right and not subject to use permit approval. The Zoning Ordinance recognizes that open storage in the Industrial District is not appropriate in all industrial locations. The purpose of use permits is to assure that certain uses are *‘permitted where there is a community need, and to assure said uses occur in maximum harmony with the area and in accordance with official City policies.’* The Planning Director determined that the proposed use would not occur in maximum harmony with the area and in accordance with official City policies.

Regarding the use of a trailer as an office, the Zoning Ordinance provides for the use of trailers only in conjunction with ongoing construction (often referred to as “construction trailers.”) Otherwise, mobile homes (sometimes referred to as trailers) are permitted only in the Mobile Home Park District and are prohibited in the Industrial District. Staff is aware that the trailer has been on the property since the property was annexed to the City and, therefore, may have had a legal nonconforming status at one time. However, because there was no legal business on the property for a time period exceeding six months, the trailer may no longer be used and must be removed from the property. The use of mobile homes in the Industrial District was challenged in conjunction with a previous application in 1999 to change the Zoning Ordinance to allow mobile homes. The City Council turned down the request and the mobile home was removed from the Breakwater Avenue/Johnson Road site, which is less than 1000 feet from subject property. Even if the nonconforming status of the trailer was retained, a new use requiring approval of a use permit requires that current standards be met, including Industrial Design Standards, the provision of sanitary facilities, and providing access to the disabled. These same standards also apply to the other structure (workshop) proposed for the site and which, as found by the Planning Director, would not conform to current design standards.

With respect to the variance requests to eliminate landscaping along Johnson Road and install two signs rather than one, in staff’s opinion, the requisite findings could not be made to allow elimination of landscaping along Johnson Road. However, were the use to be approved, consideration might be given to a second sign due to its location on two street frontages. However, staff **finds** no justification for placing two signs along Breakwater Street as proposed.

Environmental Review

An action on an environmental document is not required when a project is denied. Therefore, were the Planning Commission to consider approval of the use permit, staff would have to review the application in terms of its environmental impacts, including consistency with adopted City policies.

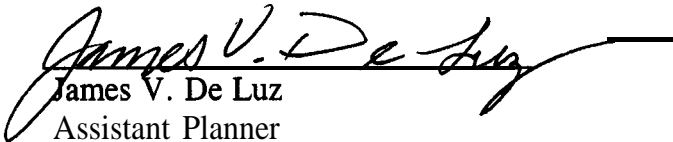
Public Notice:

On December 29, 2000, a Notice of Public Hearing was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Previously a notice seeking general comments regarding the administrative use permit was mailed to all the above individuals when the applicant submitted the administrative use permit application. One response from a business owner located at 3871 Breakwater Avenue was received indicating no objection supporting the application, see attached comment. Later a Notice of Decision informing the public of the Planning Directors decision to deny the administrative use permit was mailed to all the same individuals when the Planning Director administratively denied the permit. No further comments were received regarding the application.

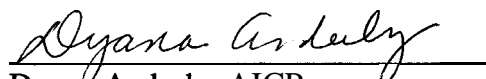
Conclusion:

If the Planning Commission is inclined to approve the appeal and approve the use, then the hearing should be continued to a future meeting in order to allow time for staff to craft the appropriate environmental documents, findings, and conditions of approval. Conditions of approval would likely require hook-ups to utilities; improvements to Johnson Road; adequate screening from all areas (including the sensitive habitat area) in the form of high, decorative masonry walls; substantial landscaping along Breakwater Avenue, and paving of the site in the parking/traffic circulation areas.

Prepared by:


James V. De Luz
Assistant Planner

Recommended by:


Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Denial
- C. E-Mail dated 6/22/2000 not objecting to the application
- D. Appellant's Letter of Appeal dated 11/14/2000
Plans

1527 B 416

1527
Railroad Easement
10' Driveway Easement

WHITESELL

I

A.M. - 439

A.M. - 439

STREET

BAY CENTER PLACE

AVENUE

STATE HIGHWAY ROUT

BREAKWATER

Johnson Road

FREEWAY

JACKSON

POINT EDEN WAY

SAN LEANDRO - HAYWARD

1527 B

1527 B 412

Area & Zoning Map

AU P 00-1 50-20

Address: 4321 Breakwater Avenue

Applicant: Elias Motaz, Pinnacle Stone

Owner: Robert S. Figone, Jr.

ATTACHMENT A

FINDINGS FOR DENIAL
ADMINISTRATIVE USE PERMIT APPLICATION NO. 00-150-20
ELIAS MOTAZ/PINNACLE STONE (APPLICANT/OWNER)
4321 BREAKWATER AVENUE
(September 20, 2000)

- A. That Administrative Use Permit Application No. 2000-150-20, a request to operate an imported natural stone products wholesale sales and distribution facility to permit the open storage and display of stone products and product processing and to continue the use of an existing modular office structure as a business office will have no significant impact on the environment cumulative or otherwise. The project is exempt from CEQA (California Environmental Quality Act) pursuant to Section 15301(d, h, and i), Existing Facilities. The project consists of the continued operation of an imported natural stone products wholesale sales and distribution facility, the open storage and display of stone products, product processing, the continued use of an existing modular office and existing workshop structure, the minor modification to an existing work shop and to install new landscaping, paving; **signage**, and fencing; and
- B. That approval of Use Permit Application No. 2000-150-20, is inconsistent with the City's General Policies Plan in that the Plan designates Route **92/Breakwater** Avenue as an "Industrial Corridor" and that the Growth Management Element of the Plan designates the "Industrial Corridor" as an area of potential growth where beneficial change and future development should attract desirable forms of economic development including international trade, university-related research, and environmentally friendly businesses as well as warehouse retail, and business support retail and service uses; and that Policy II of the Economic Development Element of the Plan states to ***"Create a sound local economy which attracts investment, increases the tax base, creates employment opportunities for residents and generates public revenues"***; and
- C. That the proposed operation of a natural stone products wholesale sales and storage facility is not desirable for the public convenience or welfare in that the use involves a large open storage yard located on a 1.76 acre marginally improved industrial parcel and that approval to continue the use of the property for low intensity open storage and processing of stone products and related activities deprives other more-intensive, **tax**-generating, high-employment industrial uses that are more suited to a key gateway entry into Hayward from acquiring and developing the property with other more appropriate uses that offer greater employment opportunities than the current use and that approval of the administrative use permit would deprive the public the opportunity to acquire key industrial properties located within the City's Industrial Corridor.; and
- D. That the proposed long-term operation of an imported natural stone products wholesale sales and distribution facility to permit the open, storage and display of stone products

and product processing, and to continue the use of an existing modular office structure as a business office within the Industrial Corridor will impair the character and integrity of the Industrial District in that new industrially-oriented support businesses needed to serve the City's Industrial District will be denied the opportunity to develop their industrial activities at this location in that there are few key gateway locations within the City's Industrial Corridor that offer a highly visible industrially oriented development site. Furthermore land values in the City's Industrial District, especially within the Industrial Corridor can no longer economically support long-term low intensity open storage activities and that the availability of developable industrial properties in this area are no longer readily available; and

- E. That the proposed operation of an imported natural stone products wholesale sales and distribution facility will be detrimental to the public health, safety, or general welfare in that although the existing facility is designed to restrict access from the general public and that the proposed improvements, such as fencing and landscaping will secure the facility and provide some screening of the open storage within the site from the public, adjacent industrial and commercial uses, the environmentally sensitive wildlife and open space area located to the west of the applicant's property and to the future Bay Trail and that the public in general may be impacted by the open storage, the nature of the operation in that it involves the sawing, chiseling, **and** grinding of stone and stone products which generates dust and noise and that a strategy of the Economic Development Element of the General Plan states ***"Revitalize declining commercial and industrial areas and obsolete facilities through rezoning, redevelopment, rehabilitation and other available means"***; which in this case would require denial of the administrative use permit application; and
- F. That the proposed operation of an imported natural stone products wholesale sales and distribution facility is no longer in harmony with applicable City policies and the intent and purpose of the zoning district involved in that the facility has operated without approval of an administrative use permit and that approval of the use would allow it to continue operation, that it is no longer in conformance with the City's Industrial Design Standards and City economic development goals and policies; and that the use is aesthetically detrimental in that it is located at a key gateway into Hayward; and
- G. That the proposed operation of an imported natural stone products wholesale sales and distribution facility is not in harmony with applicable City policies and the intent and purpose of the Industrial District in that it involves open storage adjacent to a key gateway approach to the City of Hayward, and that approval of the facility would preclude development that is in accordance with the economic development of the Industrial District envisioned by the City's Growth Management Plan and that approval would not promote the appearance of the Industrial Corridor to encourage further quality development; and

- H. That the applicant's request for a variance to delete the installation of landscape improvements along Johnson Road is an exception to the City's Industrial Design and Performance Standards, that the required findings to support the variance: **a) *There are special circumstances applicable to the property including size, shape topography, location or surroundings or other physical constraints;*** **b) *Strict application of the Zoning Ordinance deprives such property of privileges enjoyed other property in the vicinity under the same zoning classification,*** and **c) *The variance does not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located,*** cannot be made; and that the landscape planter a minimum of 10 feet in width is required along the Johnson Road frontage and that the planter is typical of landscape requirements within the City's industrial district.

From: "gmsalusky" <gmsalusky@msn.com>
To: COHD.CED(JimD)
Date: Thu, Jun 22, 2000 7:11 PM
Subject: 4321 Breakwater Ave. Hayward Pinnacle Stone

I have no objections to Pinnacle Stone operating down the street from me. Gary Salusky 3871 Breakwater Ave. Hayward, Ca. 94545 (510) 782-9454 / 760-9750

Robert S. Figone Testamentary Trust

Mrs. Wendy Parrino
3612 Lake Terrace Dr.
Elk Grove, CA 95758
Phone 916-684-0722
Fax 916-691-6294
USA

November 14, 2000

James V. Deluze
Planning Division
City of Hayward
777 B Street
Hayward, CA 94541

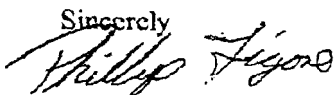
Mr. James Deluz

We are the current owner of the property at 4321 Breakwater Avenue in Hayward, We would like to appeal the decision to deny our use permit reference #2000-150-20. We would like a hearing in front of the planning commission. We have been at this location for more than twenty years and have used this area for a construction/storage yard. We have recently sold .76 of our 1.76 acres to the State of California for a pedestrian **over crossing**. We are sure you are aware that the State of California is widening Highway 92. They are also building a sound wall which will be 14 ' tall. Once this wall is complete our property will not be visible from the freeway. We believe the plans that we have set forth to the city will greatly enhance the property and surrounding area.

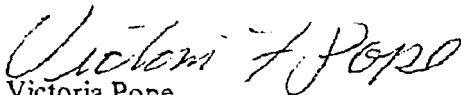
If the city of Wayward has conducted any studies or has any evidence to substantiate their claim that the Natural Stone business (now leasing the above noted property) is detrimental to the publics health and safety. We would appreciate a copy of any and all reports.

The Natural Stone Company now renting this property fi-om us also helps the economy by employing workers and bringing revenue to the City of Hayward. We request a hearing on this matter so we may plea our case to the City of Hayward planning Department. Please contact us as soon as you have set a hearing date. Thank you very much for your time

Sincerely



Phillip Figone
Trustee



Victoria Pope
Trustee